Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
WLOS Licensee, LLC	)	Facility I.D. No. 56537
	)	NAL/Acct. No. 1041420001
Licensee of Station	)	FRN: 0009405226
WLOS(TV), Asheville, North Carolina	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 28, 2010 **Released: May 4, 2010**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")* issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),[1] by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,[2] we find that WLOS Licensee, LLC (the "Licensee"), licensee of Station WLOS(TV), Asheville, North Carolina (the "Station"), apparently willfully and repeatedly violated Section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children's programming.[3] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of eight thousand dollars ($8,000).

II. BACKGROUND

2. In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia,* limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial").[4]

3. On August 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station WLOS(TV) (the "Application") (File No. BRCT-20040730AQF). In response to Section IV,

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[1] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

[2] See 47 C.F.R. § 0.283.

[3] *See* 47 C.F.R. § 73.670.

[4] *Childrens Television Programming*, 6 FCC Rcd 2111, 2118, recon. granted in part, 6 FCC Rcd 5093, 5098 (1991).

Question 5 of the Application, the Licensee stated that, during the previous license term, the Station failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee indicated that station WLOS(TV) exceeded the children's television commercial limits on Saturdays between February 10, and July 14, 2001, on approximately 23 occasions. Of these overages, all were 30 seconds in duration. The Licensee explains that effective February 10, 2001, station WLOS(TV) replaced the program "Disney's Doug," which was scheduled for Saturdays at 9:00 a.m., with the program "Teachers Pet." According to the Licensee, "Disney's Doug" had been formatted with 5 minutes of commercial time, while "Teachers Pet" was scheduled with 5 ½ minutes of commercial time. The Licensee states that, because its regularly scheduled 9:30 a.m. program was also scheduled with 5 ½ minutes of commercial time, insertion of "Teachers Pet" resulted in a 30-second overage. Licensee explains that "the Station's programming coordinator inadvertently overlooked ABC's notification to the Station of the Program's formatting change," which was not discovered until mid-July, 2001, and further states that, upon discovering the overage, station WLOS(TV) replaced the program "Teachers Pet" with programming that was formatted for 5 minutes of commercial time. Licensee maintains that the station has taken additional measures to make sure this kind of mistake is not repeated in the future. Licensee states specifically that each week station WLOS(TV)'s traffic department will obtain the children's programming formats from the ABC website and verify the information against the station's log, and that the station's traffic, engineering, and programming department will review and sign the station's log each week.

III. DISCUSSION

4. Station WLOS(TV)'s record of exceeding the children's television commercial limits on approximately 23 occasions from February 10 through July 14, 2001, constitutes a willful and repeated violation of section 73.670 of the Commission's Rules. Overages of this number cannot be considered isolated and, thus, are not *de minimus*.[5] It further means that children have been subjected to commercial matter in excess of the limits contemplated by Congress when it enacted the Children's Television Act of 1990.[6] The Commission has repeatedly rejected human error and/or inadvertence as a basis for excusing violations of the children's television commercial limits.[7] Moreover, while corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, this does not relieve the Licensee of liability for the violations which have occurred.[8]

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[9] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[10] The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both

[5] *Children's Television Programming*, 6 FCC Rcd at 2117.

[6] *Id.* at 2117-2118.

[7] *See, e.g., LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications (KTVJ(TV))*, 9 FCC Rcd 1831 (MMB 1994).

[8] *See, e.g., WHP Television, L.P.*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc.* (*KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS(TV))*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc.*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

[9] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[10] 47 U.S.C. § 312(f)(1).

Sections 312 and 503(b) of the Act,[11] and the Commission has so interpreted the term in the Section 503(b) context.[12] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[13]

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of $8,000 for violation of Section 73.670.[14] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[15]

7. In this case, the Licensee has acknowledged that it violated the children's television commercial limits on approximately 23 occasions. For the reasons discussed above, we find that the Licensee is apparently liable for a forfeiture in the amount of $8,000 for its apparent willful and repeated violation of Section 73.670.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that WLOS Licensee, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eight thousand dollars ($8,000) for its apparent willful and repeated violation of Section 73.670 of the Commission's Rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL,* WLOS Licensee, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV—27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

11. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

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[11] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[12] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[13] 47 U.S.C. § 312(f)(2).

[14] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) *("Forfeiture Policy Statement"), recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

[15] 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement,* 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[16]

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WLOS Licensee, LLC, c/o Clifford M. Harrington, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037-1122.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[16] *See* 47 C.F.R. § 1.1914.